

AMENDED IN SENATE MARCH 16, 2009

**SENATE BILL**

**No. 95**

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**Introduced by Senator Corbett**

January 22, 2009

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An act to amend Section 1770 of the Civil Code, and to amend Sections 3050, 11710, ~~and 11711~~ 11711, and 11722 of, and to add Sections ~~4456.5 and 11713.05~~ Section 4456.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 95, as amended, Corbett. *California Car Buyers' Protection Act of 2009.*

(1) Existing law makes it unlawful, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising, transfer, and sale of motor vehicles.

This bill would enact the California Car Buyers' Protection Act of 2009, which, among other things, would make it unlawful for a dealer who acquires a used vehicle with a balance due to a secured party to fail to pay off the entire balance prior to advertising the vehicle for sale or transferring or selling the vehicle and would increase the amount of a dealer's bond from \$50,000 to ~~\$250,000 for a franchisee of new motor vehicles and to \$100,000 for independent dealers~~ \$100,000.

(2) Existing law creates within the Department of Motor Vehicles a New Motor Vehicle Board, which adjudicates disputes between new motor vehicle franchisees and their respective franchisors and hears appeals on decisions of the department affecting new motor vehicle dealers. The board also mediates disputes between members of the public and new motor vehicle dealers, distributors, and manufacturers.

This bill would exclude disputes involving motor vehicle purchasers and lessees from this authority of the board to mediate disputes.

(3) Existing law requires, among other things, that if any person suffers any loss or damage by reason of a specified violation of law by the dealer or his or her salesperson, then that person has a right of action against the dealer, the salesperson, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

This bill would instead require that if a person *who purchased or leased a motor vehicle or a motorcycle at retail* suffers any loss or damage *related to the purchase or lease of that vehicle* by reason of any fraud or contract or statutory violation practiced on him *or her* by a licensed dealer or one of the dealer's salespersons acting for the dealer, ~~in~~ *on* his or her behalf, or within the scope of the employment of his or her salesperson in connection with the purchase or lease of ~~a motor~~ *that* vehicle, then that person shall have a right of action against the dealer, his or her salesperson, and the surety upon the dealer's bond for actual damages plus any incidental and consequential damages ~~and reasonable attorneys fees~~.

(4) *Existing law requires that claims against the surety upon a dealer's bond of a financing agency that has loaned money to a licensee or assignee be allowed only to the extent that the claims of any other person or entity with respect to the dealer's bond are satisfied first and are entitled to preference over the claims of the financing agency with respect to the dealer's bond, except as specified.*

*This bill would instead require that claims against the surety upon a dealer's bond, of a financing agency, including claims based on conditional sales agreements, or the purchase of conditional sales agreements or of any other agreement entered into with a licensee, be allowed only to the extent that the claims of any persons who purchased or leased a motor vehicle or a motorcycle at retail with respect to the dealer's bond be satisfied first and are entitled to preference over the claims of the financing agency and other persons or entities, except the Department of Motor Vehicles, with respect to the dealer's bond.*

(5) The bill would also make technical and conforming changes to these provisions.

By creating new crimes, the bill would impose a state-mandated local program.

(4)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 California Car-~~Buyers~~ *Buyers'* Protection Act of 2009.

3 SEC. 2. ~~(a)~~ The Legislature finds and declares all of the  
4 following:

5 ~~(1)~~

6 (a) Many car buyers have lost confidence in the automotive  
7 marketplace, resulting in a reduction of revenues for sellers, local  
8 and county governments, and the state, contributing to job losses  
9 and the state's overall economic downturn.

10 ~~(2)~~

11 (b) During the past year at least 480 licensed and used auto  
12 dealerships have gone out of business in California, far more than  
13 in any other state, and it is projected that the numbers will continue  
14 to accelerate for the foreseeable future.

15 ~~(3)~~

16 (c) When consumers choose to purchase vehicles from auto  
17 dealerships that are licensed by the Department of Motor Vehicles,  
18 they have a reasonable expectation that the dealerships have  
19 sufficient resources to honor their contractual commitments.

20 ~~(4)~~

21 (d) Car buyers have no reliable way to know in advance whether  
22 an auto dealer is on the brink of insolvency or is on a sound  
23 financial footing.

24 ~~(5)~~

25 (e) When licensed auto dealerships go out of business they often  
26 fail to pay off liens, as agreed, and also fail to honor warranties,  
27 service contracts, and other services for which car buyers have  
28 paid in advance, costing thousands of car buyers millions of dollars  
29 in losses.

30 ~~(6)~~

1 (f) The current federal assistance ~~contemplated by the Bush~~  
2 ~~Administration~~ fails to provide any relief for car buyers, while  
3 providing taxpayer dollars to assist the auto manufacturers, dealers,  
4 and workers who are seeking assistance from the American public;  
5 yet it is ultimately car buyers who will determine the fate of our  
6 domestic auto industry by buying cars.

7 ~~(7)~~

8 (g) When licensed auto dealerships go out of business without  
9 honoring their obligations, car buyers often face ruinous  
10 consequences, through no fault of their own, resulting in harm to  
11 their credit, repossessions that remain on their credit reports for  
12 seven to 10 years, job losses due to a lack of transportation, home  
13 foreclosures, and bankruptcy.

14 ~~(8)~~

15 (h) The Department of Motor Vehicles projects that the current  
16 funding available for the Consumer Recovery Fund (CRF)  
17 established by enactment ~~in 2007 of Senate Bill 729 (Padilla)~~ of  
18 *Senate Bill 729 of the 2007–08 Regular Session* will not be  
19 sufficient to meet all the demands made upon the CRF by car  
20 buyers with legitimate complaints. Even if sufficient funds were  
21 available, there is no authority to provide restitution from the CRF  
22 for losses incurred involving prepaid products, warranties, or  
23 services or to restore the credit of consumers whose credit is  
24 harmed by dealer insolvencies, lost jobs, lost income, or other  
25 damages consumers suffer due to a lack of transportation when  
26 vehicles are repossessed because auto dealers failed to pay off  
27 liens as promised.

28 ~~(9)~~

29 (i) Honest dealers are also adversely impacted when  
30 unscrupulous auto dealers siphon off business and then harm the  
31 credit of their customers by going out of business without paying  
32 liens, as promised, shrinking the automotive market at precisely  
33 the time when it is sound public policy to expand the market and  
34 accelerate sales of newer, safer, cleaner motor vehicles.

35 ~~(10)~~

36 (j) California has established the New Motor Vehicle Board  
37 which has the authority to overrule decisions rendered by the  
38 Department of Motor Vehicles to discipline licensees in matters  
39 of resolving disputes between dealers and manufacturers.

40 ~~(11)~~

1 (k) The New Motor Vehicle Board lacks the authority to require  
2 licensees to provide any actual relief to car buyers, except for  
3 mediating disputes between the public and licensees, which is at  
4 best redundant with a function of the Department of Consumer  
5 Affairs.

6 ~~(12)~~

7 (l) Most auto manufacturers voluntarily participate in dispute  
8 resolution programs overseen and certified by the Department of  
9 Consumer Affairs as complying with minimum standards  
10 promulgated by the Federal Trade Commission, unlike the process  
11 offered by the New Motor Vehicle Board, which sometimes leads  
12 to lengthy delays.

13 SEC. 3. Section 1770 of the Civil Code is amended to read:

14 1770. (a) The following unfair methods of competition and  
15 unfair or deceptive acts or practices undertaken by a person in a  
16 transaction intended to result or that results in the sale or lease of  
17 goods or services to a consumer are unlawful:

18 (1) Passing off goods or services as those of another.

19 (2) Misrepresenting the source, sponsorship, approval, or  
20 certification of goods or services.

21 (3) Misrepresenting the affiliation, connection, or association  
22 with, or certification by, another.

23 (4) Using deceptive representations or designations of  
24 geographic origin in connection with goods or services.

25 (5) Representing that goods or services have sponsorship,  
26 approval, characteristics, ingredients, uses, benefits, or quantities  
27 that they do not have or that a person has a sponsorship, approval,  
28 status, affiliation, or connection that he or she does not have.

29 (6) Representing that goods are original or new if they have  
30 deteriorated unreasonably or are altered, reconditioned, reclaimed,  
31 used, or secondhand.

32 (7) Representing that goods or services are of a particular  
33 standard, quality, or grade, or that goods are of a particular style  
34 or model, if they are of another.

35 (8) Disparaging the goods, services, or business of another by  
36 false or misleading representation of fact.

37 (9) Advertising goods or services with intent not to sell them  
38 as advertised.

1 (10) Advertising goods or services with intent not to supply  
2 reasonably expectable demand, unless the advertisement discloses  
3 a limitation of quantity.

4 (11) Advertising furniture without clearly indicating that it is  
5 unassembled if that is the case.

6 (12) Advertising the price of unassembled furniture without  
7 clearly indicating the assembled price of that furniture if the same  
8 furniture is available assembled from the seller.

9 (13) Making false or misleading statements of fact concerning  
10 reasons for, existence of, or amounts of price reductions.

11 (14) Representing that a transaction confers or involves rights,  
12 remedies, or obligations that it does not have or involve, or that  
13 are prohibited by law.

14 (15) Representing that a part, replacement, or repair service is  
15 needed when it is not.

16 (16) Representing that the subject of a transaction has been  
17 supplied in accordance with a previous representation when it has  
18 not.

19 (17) Representing that the consumer will receive a rebate,  
20 discount, or other economic benefit, if the earning of the benefit  
21 is contingent on an event to occur subsequent to the consummation  
22 of the transaction.

23 (18) Misrepresenting the authority of a salesperson,  
24 representative, or agent to negotiate the final terms of a transaction  
25 with a consumer.

26 (19) Inserting an unconscionable provision in the contract.

27 (20) Advertising that a product is being offered at a specific  
28 price plus a specific percentage of that price unless (A) the total  
29 price is set forth in the advertisement, which may include, but is  
30 not limited to, shelf tags, displays, and media advertising, in a size  
31 larger than any other price in that advertisement, and (B) the  
32 specific price plus a specific percentage of that price represents a  
33 markup from the seller's costs or from the wholesale price of the  
34 product. This subdivision shall not apply to in-store advertising  
35 by businesses that are open only to members or cooperative  
36 organizations organized pursuant to Division 3 (commencing with  
37 Section 12000) of Title 1 of the Corporations Code if more than  
38 50 percent of purchases are made at the specific price set forth in  
39 the advertisement.

1 (21) Selling or leasing goods in violation of Chapter 4  
2 (commencing with Section 1797.8) of Title 1.7.

3 (22) (A) Disseminating an unsolicited prerecorded message by  
4 telephone without an unrecorded, natural voice first informing the  
5 person answering the telephone of the name of the caller or the  
6 organization being represented, and either the address or the  
7 telephone number of the caller, and without obtaining the consent  
8 of that person to listen to the prerecorded message.

9 (B) This subdivision does not apply to a message disseminated  
10 to a business associate, customer, or other person having an  
11 established relationship with the person or organization making  
12 the call, to a call for the purpose of collecting an existing  
13 obligation, or to any call generated at the request of the recipient.

14 (23) The home solicitation, as defined in subdivision (h) of  
15 Section 1761, of a consumer who is a senior citizen if a loan is  
16 made encumbering the primary residence of that consumer for the  
17 purposes of paying for home improvements and the transaction is  
18 part of a pattern or practice in violation of either subsection (h) or  
19 (i) of Section 1639 of Title 15 of the United States Code or  
20 subsection (e) of Section 226.32 of Title 12 of the Code of Federal  
21 Regulations.

22 A third party shall not be liable under this subdivision unless  
23 (A) there was an agency relationship between the party who  
24 engaged in home solicitation and the third party or (B) the third  
25 party had actual knowledge of, or participated in, the unfair or  
26 deceptive transaction. A third party who is a holder in due course  
27 under a home solicitation transaction shall not be liable under this  
28 subdivision.

29 (24) (A) Charging or receiving an unreasonable fee to prepare,  
30 aid, or advise any prospective applicant, applicant, or recipient in  
31 the procurement, maintenance, or securing of public social services.

32 (B) For purposes of this paragraph, the following definitions  
33 shall apply:

34 (i) "Public social services" means those activities and functions  
35 of state and local government administered or supervised by the  
36 State Department of Health Care Services, the State Department  
37 of Public Health, or the State Department of Social Services, and  
38 involved in providing aid or services, or both, including health  
39 care services and medical assistance, to those persons who, because

1 of their economic circumstances or social condition, are in need  
2 of that aid or those services and may benefit from them.

3 (ii) “Unreasonable fee” means a fee that is exorbitant and  
4 disproportionate to the services performed. Factors to be  
5 considered, when appropriate, in determining the reasonableness  
6 of a fee, are based on the circumstances existing at the time of the  
7 service and shall include, but not be limited to, all of the following:

8 (I) The time and effort required.

9 (II) The novelty and difficulty of the services.

10 (III) The skill required to perform the services.

11 (IV) The nature and length of the professional relationship.

12 (V) The experience, reputation, and ability of the person  
13 providing the services.

14 (C) Paragraph (24) shall not apply to attorneys licensed to  
15 practice law in California, who are subject to the California Rules  
16 of Professional Conduct and to the mandatory fee arbitration  
17 provisions of Article 13 (commencing with Section 6200) of  
18 Chapter 4 of Division 3 of the Business and Professions Code,  
19 when the fees charged or received are for providing representation  
20 in administrative agency appeal proceedings or court proceedings  
21 for purposes of procuring, maintaining, or securing public social  
22 services on behalf of a person or group of persons.

23 (25) Failure of a dealer as defined in Section 285 of the Vehicle  
24 Code to comply with Section 4456.5, which requires dealers who  
25 acquire a used vehicle with a balance due to a secured party to pay  
26 off the entire balance prior to advertising the vehicle for sale or  
27 transferring or selling the vehicle.

28 (b) (1) It is an unfair or deceptive act or practice for a mortgage  
29 broker or lender, directly or indirectly, to use a home improvement  
30 contractor to negotiate the terms of any loan that is secured,  
31 whether in whole or in part, by the residence of the borrower and  
32 that is used to finance a home improvement contract or any portion  
33 thereof. For purposes of this subdivision, “mortgage broker or  
34 lender” includes a finance lender licensed pursuant to the California  
35 Finance Lenders Law (Division 9 (commencing with Section  
36 22000) of the Financial Code), a residential mortgage lender  
37 licensed pursuant to the California Residential Mortgage Lending  
38 Act (Division 20 (commencing with Section 50000) of the  
39 Financial Code), or a real estate broker licensed under the Real



1 Estate Law (Division 4 (commencing with Section 10000) of the  
2 Business and Professions Code).

3 (2) This section shall not be construed to either authorize or  
4 prohibit a home improvement contractor from referring a consumer  
5 to a mortgage broker or lender by this subdivision. However, a  
6 home improvement contractor may refer a consumer to a mortgage  
7 lender or broker if that referral does not violate Section 7157 of  
8 the Business and Professions Code or any other provision of law.  
9 A mortgage lender or broker may purchase an executed home  
10 improvement contract if that purchase does not violate Section  
11 7157 of the Business and Professions Code or any other provision  
12 of law. This paragraph shall not ~~effect~~ *affect* the application of  
13 Chapter 1 (commencing with Section 1801) of Title 2 to a home  
14 improvement transaction or the financing thereof.

15 SEC. 4. Section 3050 of the Vehicle Code is amended to read:

16 3050. The board shall do all of the following:

17 (a) Adopt rules and regulations in accordance with Chapter 3.5  
18 (commencing with Section 11340) of Part 1 of Division 3 of Title  
19 2 of the Government Code governing those matters that are  
20 specifically committed to its jurisdiction.

21 (b) Hear and determine, within the limitations and in accordance  
22 with the procedure provided, an appeal presented by an applicant  
23 for, or holder of, a license as a new motor vehicle dealer,  
24 manufacturer, manufacturer branch, distributor, distributor branch,  
25 or representative when the applicant or licensee submits an appeal  
26 provided for in this chapter from a decision arising out of the  
27 department.

28 (c) Consider any matter concerning the activities or practices  
29 of a person applying for or holding a license as a new motor vehicle  
30 dealer, manufacturer, manufacturer branch, distributor, distributor  
31 branch, or representative pursuant to Chapter 4 (commencing with  
32 Section 11700) of Division 5 submitted by any person. A member  
33 of the board who is a new motor vehicle dealer may not participate  
34 in, hear, comment, advise other members upon, or decide any  
35 matter considered by the board pursuant to this subdivision that  
36 involves a dispute between a franchisee and franchisor. After that  
37 consideration, the board may do any one or any combination of  
38 the following:

39 (1) Direct the department to conduct investigation of matters  
40 that the board deems reasonable, and make a written report on the

1 results of the investigation to the board within the time specified  
2 by the board.

3 (2) Undertake to mediate, arbitrate, or otherwise resolve any  
4 honest difference of opinion or viewpoint existing between any  
5 member of the public, except a retail motor vehicle purchaser or  
6 lessee, and any new motor vehicle dealer, manufacturer,  
7 manufacturer branch, distributor branch, or representative.

8 (3) Order the department to exercise any and all authority or  
9 power that the department may have with respect to the issuance,  
10 renewal, refusal to renew, suspension, or revocation of the license  
11 of any new motor vehicle dealer, manufacturer, manufacturer  
12 branch, distributor, distributor branch, or representative as that  
13 license is required under Chapter 4 (commencing with Section  
14 11700) of Division 5.

15 (d) Hear and decide, within the limitations and in accordance  
16 with the procedure provided, a protest presented by a franchisee  
17 pursuant to Section 3060, 3062, 3064, 3065, or 3065.1. A member  
18 of the board who is a new motor vehicle dealer may not participate  
19 in, hear, comment, advise other members upon, or decide, any  
20 matter involving a protest filed pursuant to Article 4 (commencing  
21 with Section 3060), unless all parties to the protest stipulate  
22 otherwise.

23 (e) Notwithstanding subdivisions (c) and (d), the courts have  
24 jurisdiction over all common law and statutory claims originally  
25 cognizable in the courts. For those claims, a party may initiate an  
26 action directly in any court of competent jurisdiction.

27 SEC. 5. Section 4456.5 is added to the Vehicle Code, to read:

28 4456.5. If a dealer acquires a used vehicle with a balance due  
29 to a secured party, the dealer shall submit to the department  
30 evidence in the form of a notarized receipt from the secured party  
31 that the dealer has paid off the entire balance prior to transferring  
32 the vehicle, or prior to the date when payment is due, whichever  
33 occurs first. It shall be unlawful for a dealer to offer for sale,  
34 advertise for sale, or transfer a used vehicle with a balance due to  
35 a secured party prior to paying off the entire balance and submitting  
36 the notarized receipt to the department.

37 SEC. 6. Section 11710 of the Vehicle Code is amended to read:

38 11710. (a) Before any dealer's or remanufacturer's license is  
39 issued or renewed by the department to any applicant therefor, the  
40 applicant shall procure and file with the department a bond

1 executed by an admitted surety insurer, approved as to form by  
2 the Attorney General, and conditioned that the applicant shall not  
3 practice any fraud or make any fraudulent representation which  
4 will cause a monetary loss to a purchaser, seller, financing agency,  
5 or governmental agency.

6 ~~(b) A franchisee of new motor vehicles' bond shall be in the~~  
7 ~~amount of two hundred fifty thousand dollars (\$250,000) and an~~  
8 ~~independent dealer's bond shall be in the amount of one hundred~~  
9 ~~thousand dollars (\$100,000), except the~~

10 *(b) A dealer's bond shall be in the amount of one hundred*  
11 *thousand dollars (\$100,000), except the bond of a dealer who deals*  
12 *exclusively in motorcycles or all-terrain vehicles shall be in the*  
13 *amount of ten thousand dollars (\$10,000). Before the license is*  
14 *renewed by the department, the franchise or the independent dealer,*  
15 *other than a dealer who deals exclusively in motorcycles or*  
16 *all-terrain vehicles, shall procure and file a bond in the amounts*  
17 *specified above amount of one hundred thousand dollars*  
18 *(\$100,000). A remanufacturer bond shall be in the amount of fifty*  
19 *thousand dollars (\$50,000).*

20 (c) Liability under the bond is to remain at full value. If the  
21 amount of liability under the bond is decreased or there is  
22 outstanding a final court judgment for which the dealer or  
23 remanufacturer and sureties are liable, the dealer's or  
24 remanufacturer's license shall be automatically suspended. In order  
25 to reinstate the license and special plates, the licensee shall either  
26 file an additional bond or restore the bond on file to the original  
27 amount, or shall terminate the outstanding judgment for which the  
28 dealer or remanufacturer and sureties are liable.

29 (d) A dealer's or remanufacturer's license, or renewal of the  
30 license, shall not be issued to any applicant therefor, unless and  
31 until the applicant files with the department a good and sufficient  
32 instrument, in writing, in which the applicant appoints the director  
33 as the true and lawful agent of the applicant upon whom all process  
34 may be served in any action, or actions, which may thereafter be  
35 commenced against the applicant, arising out of any claim for  
36 damages suffered by any firm, person, association, or corporation,  
37 by reason of the violation of the applicant of any of the terms and  
38 provisions of this code or any condition of the dealer's or  
39 remanufacturer's bond. The applicant shall stipulate and agree in  
40 the appointment that any process directed to the applicant, when

1 personal service of process upon the applicant cannot be made in  
2 this state after due diligence and, in that case, is served upon the  
3 director or, in the event of the director's absence from the office,  
4 upon any employee in charge of the office of the director, shall be  
5 of the same legal force and effect as if served upon the applicant  
6 personally. The applicant shall further stipulate and agree, in  
7 writing, that the agency created by the appointment shall continue  
8 for and during the period covered by any license that may be issued  
9 and so long thereafter as the applicant may be made to answer in  
10 damages for a violation of this code or any condition of the bond.  
11 The instrument appointing the director as the agent for the applicant  
12 for service of process shall be acknowledged by the applicant  
13 before a notary public. In any case where the licensee is served  
14 with process by service upon the director, one copy of the summons  
15 and complaint shall be left with the director or in the director's  
16 office in Sacramento or mailed to the office of the director in  
17 Sacramento. A fee of five dollars (\$5) shall also be paid to the  
18 director at the time of service of the copy of the summons and  
19 complaint. Service on the director shall be a sufficient service on  
20 the licensee if a notice of service and a copy of the summons and  
21 complaint are immediately sent by registered mail by the plaintiff  
22 or the plaintiff's attorney to the licensee. A copy of the summons  
23 and complaint shall also be mailed by the plaintiff or the plaintiff's  
24 attorney to the surety on the applicant's bond at the address of the  
25 surety given in the bond, postpaid and registered with request for  
26 return receipt. The director shall keep a record of all process so  
27 served upon the director, which record shall show the day and hour  
28 of service and shall retain the summons and complaint so served  
29 on file. Where the licensee is served with process by service upon  
30 the director, the licensee shall have and be allowed 30 days from  
31 and after the service within which to answer any complaint or other  
32 pleading which may be filed in the cause. However, for purposes  
33 of venue, where the licensee is served with process by service upon  
34 the director, the service is deemed to have been made upon the  
35 licensee in the county in which the licensee has or last had an  
36 established place of business.

37 SEC. 7. Section 11711 of the Vehicle Code is amended to read:

38 11711. (a) If a person ~~shall suffer~~ *who bought or leased a*  
39 *motor vehicle or a motorcycle at retail suffers* any loss or damage  
40 *related to the purchase or lease of that vehicle* by reason of any

1 fraud or contract or statutory violation practiced on him or her by  
2 a licensed dealer or one of the dealer's salespersons acting for the  
3 dealer,~~in~~ on his or her behalf, or within the scope of the  
4 employment of his or her salesperson in connection with the  
5 purchase or lease of ~~a~~ *that* motor vehicle, then that person shall  
6 have a right of action against the dealer, his or her salesperson,  
7 and the surety upon ~~the dealer's bond for actual damages plus any~~  
8 ~~incidental and consequential damages and reasonable attorney's~~  
9 ~~fees.~~ *the dealer's bond for actual damages plus any incidental and*  
10 *consequential damages.*

11 (b) If the state or a political subdivision of the state ~~shall suffer~~  
12 ~~suffers~~ any loss or damage by reason of any fraud practiced on the  
13 state or fraudulent representation made to the state by a licensed  
14 dealer, or one of the dealer's representatives acting for the dealer,  
15 ~~in~~ on his or her behalf, or within the scope of employment of the  
16 dealer's representatives, or ~~shall suffer~~ *suffers* any loss or damage  
17 by reason of the violation of the dealer or his or her representative  
18 of any of the provisions of Division 3 (commencing with Section  
19 4000) of this code, or Part 5 (commencing with Section 10701);  
20 *of* Division 2 of the Revenue and Taxation Code, the state or a  
21 political subdivision of the state, through the department, shall  
22 have a right of action against the dealer, his or her representative,  
23 and the surety upon the dealer's bond in an amount not to exceed  
24 the value of the vehicles involved.

25 (c) The failure of a dealer upon demand to pay the fees and  
26 penalties determined to be due as provided in Section 4456 shall  
27 be a violation of Division 3 (commencing with Section 4000) of  
28 this code, and Part 5 (commencing with Section 10701); *of* Division  
29 2 of the Revenue and Taxation Code and shall constitute loss or  
30 damage to the state in the amounts of those fees and penalties  
31 determined to be due and not paid.

32 (d) The claims of the state under subdivision (b) shall be  
33 satisfied first and entitled to preference over all claims under  
34 subdivision (a).

35 (e) The claims of a person under subdivision (a) who is not a  
36 licensee shall be satisfied first and entitled to preference over all  
37 other claims under subdivision (a).

38 ~~SEC. 8. Section 11713.05 is added to the Vehicle Code, to~~  
39 ~~read:~~

1     ~~11713.05.— Notwithstanding any other provision of law, when~~  
2     ~~a dealer knew or should have known that he or she lacked sufficient~~  
3     ~~financial resources to comply with contracts entered into with~~  
4     ~~motor vehicle purchasers, and the purchasers suffer damages as a~~  
5     ~~result of the dealer going out of business, the dealer's failure to~~  
6     ~~satisfy a lien on a vehicle accepted in trade, prior to the transfer~~  
7     ~~of that vehicle, shall render null and void any otherwise applicable~~  
8     ~~defense that the dealer, its corporation, or a nonliving entity may~~  
9     ~~have in law or equity, including, but not limited to, piercing of the~~  
10    ~~corporate veil or other applicable shield from liability. Such a~~  
11    ~~violation shall result in a nonrebuttable presumptive finding of~~  
12    ~~alter-ego, if pled in an action against the dealer's corporation or~~  
13    ~~other nonliving entity.~~

14    ~~SEC. 8. Section 11722 of the Vehicle Code is amended to read:~~

15    ~~11722. Claims, against the surety upon a dealer's bond, of a~~  
16    ~~financing agency that has loaned money to a licensee or assignee~~  
17    ~~thereof shall be allowed only to the extent that the claims of any~~  
18    ~~other person or entity with respect to the bond under Section 11711~~  
19    ~~shall be satisfied first and entitled to preference over the claims of~~  
20    ~~the financing agency with respect to the bond; provided, however,~~  
21    ~~that as to any conditional sales contract as defined in Section 2981~~  
22    ~~of the Civil Code, acquired by way of purchase or pledge, a~~  
23    ~~financing agency shall be entitled to protection under the bond~~  
24    ~~with the same preference set forth under Section 11711 if the~~  
25    ~~financing agency is defrauded by a licensee, or claims based upon~~  
26    ~~accepted assignments of conditional sales agreements, or the~~  
27    ~~purchase of conditional sales agreements or of any other~~  
28    ~~agreement entered into with a licensee shall be allowed only to~~  
29    ~~the extent that the claims of any persons who purchased or leased~~  
30    ~~a motor vehicle or a motorcycle at retail with respect to a dealer's~~  
31    ~~bond under Section 11711 shall be satisfied first and entitled to~~  
32    ~~preference over the claims of the financing agency and other~~  
33    ~~persons or entities, except the department, with respect to the~~  
34    ~~dealer's bond.~~

35    ~~SEC. 9. Nothing in this act shall be construed to limit, in any~~  
36    ~~way, the existing rights, remedies, or recourses available to any~~  
37    ~~person who purchases or leases vehicles at retail.~~

38    ~~SEC. 9.~~

39    ~~SEC. 10. No reimbursement is required by this act pursuant to~~  
40    ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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